UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

Garey E. Lindsay, Regional Director of the Ninth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board	)	
Petitioner,	)	**Civil Action No. 5:17-198-KKC**
vs.	)	**Judge Karen K. Caldwell**
Leggett & Platt, Inc.,	)	
Respondent.	)	

RESPONDENT LEGGETT & PLATT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S REQUEST FOR AN INJUNCTION UNDER SECTION 10(j) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

Respectfully submitted,

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I.
PRELIMINARY STATEMENT

Petitioner Garey E. Lindsay, Regional Director of the Ninth Region of the National Labor Relations Board ("Petitioner"), requests an injunction under section 10(j) of the National Labor Relations Act ("Act").[1] His request should be denied. The undisputed facts are that as of January 11, 2017, when it announced its intent to withdraw recognition from the International Association of Machinists Local 619 ("Union"), and on March 1, 2017 when it actually withdrew recognition, Leggett & Platt, Inc. ("Leggett" or "Company") possessed a petition, signed by a majority of its bargaining unit employees at its Winchester plant, stating those employees no longer desired union representation. There is no allegation that the employees' disaffection petition was tainted by unfair labor practices. The only question is whether, as of March 1, 2017,[2] Leggett had the right to withdraw recognition based on the majority petition.

In arguing that Leggett did not have the right to withdraw recognition on March 1, Petitioner relies on a pro-union petition. There are two significant problems with this reliance. First, Leggett has evidence that the Union misrepresented the nature of its petition and did not include the necessary language on the petition at the time that some employees signed it; thus, the pro-union petition is not valid. Second, even if the Union's petition were valid, neither the Union nor the Region disclosed its existence to Leggett prior to March 1. Rather, the Union decided to engage in a game of "gotcha" and wait until Leggett formally withdrew recognition, and even then the Union's petition was not disclosed to Leggett until Petitioner filed the instant injunction case. Had the pro-union petition been valid and disclosed sooner, we would not be here today; rather, the NLRB would be holding election proceedings. Either way, this Court

[1] The Ninth Region of the National Labor Relations Board, which investigated the underlying unfair labor practice allegations in this case, is referred to as "Region 9" or "Region." The National Labor Relations Board is referred to as "NLRB" or "Board."

[2] All dates referenced herein are to 2017 unless otherwise noted.

should not reward the Union's misrepresentations or the game of "gotcha" by granting the Petitioner's requested relief. Petitioner's request for a section 10(j) injunction should be denied.

II.
STATEMENT OF THE CASE AND FACTS

On December 19, 2016, the Company received a petition signed by a majority of its Winchester, Kentucky plant's[3] bargaining unit employees stating:

> The undersigned employees of Leggett and Platt # 002 do not want to be represented by IAM Local 619 hereafter referred to as "union" [sic]

(Pet. Ex. E) (hereinafter the disaffection petition).[4] There is no dispute that as of January 11, a majority of Leggett's employees had signed this petition clearly expressing their desire to no longer be represented by the Union. Accordingly, on January 11, Leggett informed the Union that it would decline to negotiate a successor collective bargaining agreement with the Union. (Pet. Ex. G). It also informed the Union that it would withdraw recognition from the Union when the parties' collective bargaining agreement ("CBA") expired on February 28, but that in the meantime, it would continue to honor the CBA and recognize the Union. (*Id.*)

Next, on January 12, the Company informed its bargaining unit employees that a majority of them had notified the Company that they no longer desired to be represented by the Union. The Company explained that it therefore told the Union that it would withdraw recognition when the CBA expired. The Company also told employees that, "assuming nothing changes with respect to [their] desire to no longer be represented by the Union after February 28, 2017," the

[3] The Company's Winchester, Kentucky plant is also known as Branch #002.

[4] Petitioner's Memorandum of Points and Authorities herein is referred to as "Pet. Mem. at __." Exhibits to the Petitioner's Memorandum of Points and Authorities are referred to herein as "Pet. Ex. ___". Leggett's exhibits are cited as "Resp. Ex. ___." To the extent that Petitioner relies on counsel's February 1, 2017 position statement, attached to its Memorandum as Exhibit F, as evidence or cites it to support factual allegations, such reliance is improper. As stated in footnote 1 of that position statement, it was intended to assist the Region in its investigation of unfair labor practice charge nos. 09-CA-191313 and 09-CA-191371. The position statement expressly states that it was not intended to be used as evidence in any other proceeding or forum, such as this case. (*See* Pet. Ex. F at 1, n.1).

Company would begin implementing new terms and conditions of employment following withdrawal. (Pet. Ex. H, emphasis added).

As of January 23, 182 employees had signed the disaffection petition. (Pet. Exs. E, L). Leggett verified the signatures on the disaffection petition by comparing those signatures to known employee signatures in personnel files and provided the verification information on which it relied to Region 9.[5] (*See* Pet. Ex. F).

The Union filed two unfair labor practice charges on January 17. They alleged that the Company violated the Act by anticipatorily withdrawing recognition, by refusing to bargain with the Union, by directly dealing with employees, and that the employees' disaffection petition was tainted because the Company provided unlawful assistance to employees in obtaining signatures. (Resp. Exs. 1, 2). The Company fully cooperated with the Region's investigation into these allegations. The Region also questioned bargaining unit employees regarding the disaffection petition. (Resp. Ex. 8). The Region ultimately dismissed these charges, thus affirming that the employees' disaffection petition was lawful, supported by a majority of employees and not tainted by employer interference. (Resp. Exs. 3, 4).[6]

Significantly, in its correspondence with employees, with the Union and with the Region, the Company consistently indicated that it would withdraw recognition from the Union on March 1 only if a majority of its bargaining unit employees no longer supported the Union on that date. It so stated in the January 12 letter to employees referenced above. (Pet. Ex. H). It so stated in a February 22 letter to the Union. (Resp. Ex. 11, Ex. A). Leggett, through counsel, also verbally

[5] Petitioner did not attach the documents the Company used to verify the disaffection petition signatures to its Memorandum. The Company has not attached those documents to its Memorandum, either, because they are voluminous.

[6] The Union filed another unfair labor practice charge, 09-CA-194422 on March 8 alleging that Leggett's January 12 letter unlawfully promised benefits to employees. The Region dismissed this charge on March 27 as well. (Resp. Ex. 5).

requested that the Region advise it if it appeared that the Union obtained a restored majority, could evaluate its legal options. Despite these communications, neither the Union nor the Region provided Leggett with any evidence that the Union had somehow regained majority support among Leggett's bargaining unit employees before March 1. Rather, all the Union did was send Leggett a letter on February 21 stating that it "did not believe" Leggett's claims, but this is hardly sufficient to communicate that the Union had a restored majority. (*See* Pet. Ex. J).

Accordingly, based on the clear and undisputed evidence before it, Leggett formally withdrew recognition from the Union on March 1. The fact that 15 employees who signed the original disaffection petition had left Leggett's employment did not render the petition a minority one; rather, it was still supported by 167 employees out of a bargaining unit population of 295—56.6 % of the unit. (*See* Pet. Mem. at 4-5).

In communicating the withdrawal, Leggett expressly noted that the Union had not provided it with any evidence that the Union continued to enjoy majority support among the bargaining unit employees. (Pet. Ex. K). The Union again filed an unfair labor practice charge alleging that the Company's withdrawal of recognition was unlawful. (Pet. Ex. A). The Region issued an amended complaint on the Union's charge on April 27 (its original complaint issued on April 11), and alleged that turnover in the employee unit and the fact that 28 employees signed both the disaffection petition and a petition expressing support for the Union meant that the disaffection petition was not supported by a majority of employees on March 1. (Pet. Ex. 3). The Company timely answered the amended complaint on May 11. It was not until Petitioner filed its request for 10(j) relief in this Court that Leggett received a copy of the pro-union petition on which the Region's complaint is based.

Now that the Company has actually received the Union's petition, it has been able to investigate some of the facts surrounding it. Attached to this Memorandum are the declarations of Glen Dixon (Resp. Ex. 6), Tina Freeman (Resp. Ex. 7), Fredrick Sandefur (Resp. Ex. 8), Michael Robinson (Resp. Ex. 9) and James Green (Resp. Ex. 10). They are bargaining unit employees who allegedly signed the Union's petition. Dixon, Freeman, Sandefur and Green also signed the disaffection petition. None of them understood that the document they signed was intended to convey their support for the Union. Rather, most of them were told that the purpose of the document was to obtain strike benefits or insurance information. Dixon, Green, and Robinson declare that the language now at the top of the Union's petition stating, "We the undersigned members of the International Association of Machinists and Aerospace Workers, Local Lodge 619, support the Union at Leggett & Platt, Inc." was not there when they signed the document. Moreover, Freeman, Sandefur and Green declare that they supported decertifying the Union on the dates they allegedly signed the Union's petition, and at all times since.[7]

III.
ARGUMENTS AND AUTHORITIES

Petitioner's request for a 10(j) injunction should be denied.

[7] Leggett objects to and moves to strike the Union's petition attached to Petitioner's Memorandum as Exhibit I. The signatures on the petition were not collected by Petitioner, and Petitioner has presented no evidence tending to authenticate either the signatures on the petition or the circumstances surrounding its execution. Indeed, Petitioner cannot authenticate his Exhibit I because neither he nor the Board created the document or collected the signatures; thus, he has no personal knowledge regarding its contents. FED. R. EVID. 602, 901. Rather, Petitioner appears to take this Union-sponsored document at face value without any independent effort to authenticate it other than the Union's representation. Furthermore, any effort by Petitioner or the Board to relate what the Union told them about the document would be inadmissible hearsay. FED. R. EVID. 802. Moreover, especially in this case where there is strong evidence that Petitioner Exhibit I was altered after signing, an original writing is required in order to prove its contents. FED. R. EVID. 1002, 1003; s*ee, e.g., U.S. v. Haddock*, 956 F.2d 1534, 1545 (10th Cir., 1992) (noting that a trial court must be wary of admitting duplicates "where the circumstances surrounding the execution of the writing present a substantial possibility of fraud.") (internal citations omitted). There is not any evidence indicating that Petitioner has seen the original of his Exhibit I, and he clearly has not presented an original to this Court.

A. Legal Standards Governing 10(j) Relief.

In order to grant relief under section 10(j), the district court must find that there is "reasonable cause" to believe that unfair labor practices have occurred. *See Muffley v. Voith Indus. Servs., Inc.* 551 Fed. Appx. 825, 827 (6th Cir. 2014) (unpublished op.); *Fleischut v. Nixon Detroit Diesel*, 859 F.2d 26, 29 (6th Cir. 1988). If the district court finds that such reasonable cause exists, it must next determine whether injunctive relief is just and proper. *Nixon Detroit Diesel*, 859 F.2d at 29. If either question is answered in the negative, then the district court must deny the petition. *Id.*[8] Each inquiry is separate utilizing separate standards. *Id.*

B. There is no Reasonable Cause to Believe that Unfair Labor Practices Have Occurred in this Case.

There is no reasonable cause to believe that unfair labor practices have occurred in this case for two reasons: (1) The Union's petition, on which Petitioner's complaint and this proceeding are based, is invalid; and (2) the Union's hiding of its alleged evidence of restored majority support until after the Company withdrew recognition is incompatible with the requirements of the Act.

In order to establish this element, Petitioner must advance some evidence in support of his petition and establish that his theory is substantial and not frivolous. *Id.* The reasonable

[8] There is a split of authority among the circuits regarding the appropriate legal framework to be applied in a 10(j) case. *See, e.g., Ahearn v. Jackson Hosp. Corp.*, 351 F.3d 226, 234-36 (6th Cir. 2013) (identifying and discussing circuit split). Leggett agrees with the analysis of the First, Seventh, Eighth and Ninth Circuits, which either apply or incorporate the traditional, four-factor injunction analysis in the 10(j) context, and contends that this court should apply that test here. *See, e.g., Pye v. Sullivan Bros. Printers, Inc.,* 38 F.3d 58, 64 n. 7 (1st Cir.1994); *Miller v. California Pac. Med. Ctr.,* 19 F.3d 449, 456-59 (9th Cir.1994) (*en banc*); *Kinney v. Pioneer Press,* 881 F.2d 485, 489-91 (7th Cir.1989); *see also Sharp v. Parents in Cmty. Action, Inc.,* 172 F.3d 1034, 1038 (8th Cir.1999) (retaining the "reasonable cause/just and proper" standard but also incorporating the traditional elements, such as irreparable injury, into the "just and proper" prong of the analysis). If it did so, for all of the reasons discussed in the main text, the evidence would demonstrate that Petitioner cannot establish a substantial or strong likelihood of success on the merits, that Petitioner or the Union would suffer irreparable injury, or that an injunction would serve the public interest. On the other hand, an injunction could cause substantial harm to the majority of Leggett's employees who signed the disaffection petition seeking ouster of the Union because Leggett would be forced to recognize and bargain with the Union against their wishes for an extended period of time while this matter is being resolved. Of course, Leggett recognizes that this Court is bound by Sixth Circuit precedent, so it expressly reserves this issue for appeal, if necessary.

cause analysis is divided into two parts: Whether Petitioner's legal theory is substantial, and whether the facts found satisfy the legal theory. *Id.*

1. The Pro-Union Petition on Which Petitioner Relies is Invalid.

Petitioner's legal theory is not substantial and the facts do not support it because the Union's petition is invalid. The evidence establishes that as of March 1, Leggett was in possession of a majority disaffection petition, even when the turnover of 15 people who signed that petition is accounted for. Specifically, as recognized by Petitioner in his Memorandum at 4-5, when the 15 employees who signed the disaffection petition left the bargaining unit prior to March 1, the number of employees supporting the disaffection petition was reduced to 167, which constituted 56.6% of the 295 person bargaining unit. Because the language on the disaffection petition clearly states that employees reject union representation, and because the petition was signed by more than 50% of the bargaining unit as it existed on March 1, this is clear evidence of loss of majority support entitling Leggett to withdraw recognition from the Union.[9] *See, e.g., Wurtland Nursing,* 351 NLRB 817, 817-19 (2007); *KFMB Stations*, 349 NLRB 373, 377 (2007); *Renal Care of Buffalo, Inc*., 347 NLRB 1284, 1286 (2006).

In an effort to avoid this result, Petitioner relies on a pro-union petition allegedly signed by 28 people who also signed the disaffection petition. In reality, the number of these "crossover" signatures is 27 because Reuben M. Elkins signed the pro-union petition twice—once on the first page and once on the last page of Petitioner Exhibit I.[10]

[9] It is an unfair labor practice for an employer to recognize and bargain with a minority union. 29 U.S.C. §§ 157, 158(a)(2); *Sprain Brook Manor Rehab*, 365 NLRB No. 45, slip op., at 55 (2017); *Levitz Furniture Co*., 333 NLRB 717, 724-25 (2001).

[10] In addition, Blake Griggs also signed both the disaffection petition and the pro-union petition. As the spreadsheet attached to Petitioner Exhibit M makes clear, Griggs left the bargaining unit on January 31, 2017. Accordingly, to the extent that Petitioner is counting his signature as one of its "crossover" signatures, such reliance is misplaced.

But double-counting signatures is the least of the problems with the pro-union petition. The bigger problem for Petitioner is that the evidence shows the Union's petition was obtained through misrepresentations. *See, e.g., Penn Tank Lines*, 336 NLRB 1066, 1074 (2001) (employer unlawfully withdrew recognition based upon an employee petition where employee told fellow employees that purpose of petition was to obtain wage increase); *Laverdiere's Enters*., 297 NLRB 826, 826 (1990) (employer could not rely on petition to establish loss of majority support where it misrepresented the purpose of the petition). Thus, the declarations of Dixon, Robinson and Green establish that the language currently at the top of the Union's petition expressing support for the Union was not present when they signed the petition on January 18 and February 27. (Resp. Exs. 6, 9, 10). Moreover, the declarations of Freeman and Sandefur establish that they would not have signed the Union's petition had such language been on it. (Resp. Exs. 7, 8). Rather, the declarations establish that employees in attendance at the Union's meeting on January 18 were told that they were signing documents to allow them to obtain strike benefits in the event of a strike, or information regarding insurance. (Resp. Exs. 6-9). They were not told they were signing a petition to evidence their support for the Union.

At the very least, these declarations mean that the Court cannot rely on any of the signatures on the pages signed by Dixon, Freeman, Robinson, Sandefur and Green given the Union's misrepresentations they identify. This eliminates 21 of the 27 signatures on which Petitioner relies, and thus means that Petitioner cannot show that the Union reestablished majority support on or before March 1.[11] Even if the six crossover signatures on other pages of

[11] The crossover signatures that appear on the impacted pages are: Christian McIntosh, Tyler Troy, Reuben Elkins (twice), Tina Freeman, Dustin Day, Justin Gilvin, Brian Patrick, Jose Pesina, Jack Keith, Glen Dixon, Michael Bowman, Fred Sandefur, Timothy Keeton, Tommy Roberts, Fred Gross, James Wren, James Green, Jordan Haney, Leopoldo Pesina, James Wells and Chris Payne.

the Union's petition are subtracted from the disaffection petition, the disaffection petition is still supported by 161 employees (167-6=161)—54.6% of the unit.

Moreover, Petitioner has not introduced any evidence tending to demonstrate the validity of, or verifying the signatures on, the Union's petition.[12] Indeed, there is no evidence that Petitioner, or anyone from Region 9 did anything to investigate the facts and circumstances surrounding the Union's petition. To the contrary, Sandefur declares that he was questioned by an NLRB agent regarding the disaffection petition, but was never asked about his signature on the Union's petition. (Resp. Ex. 8). Petitioner is asking this Court to take the Union's word for it and to treat the signatures on the Union's petition as established facts without any supporting evidence or investigation. Given the contrary evidence in the record, the Court should decline this invitation.

In short, there is no evidence in the record tending to establish the validity of the Union's petition, but there is strong evidence in the record demonstrating that the Union's petition is invalid based on the Union's misrepresentations as to its purpose, and the evidence showing that that the Union added the relevant language at the top of the its petition after it was already signed. Because Petitioner cannot properly rely on the Union's petition, the only investigated, trustworthy evidence in the record is that the employees' disaffection petition was supported by a majority of bargaining unit employees on March 1. As a result, Leggett lawfully withdrew recognition on that date, there is no reasonable cause to believe that Leggett's withdrawal of recognition was an unfair labor practice, and Petitioner's request for 10(j) relief should be denied.

[12] *See supra,* n.7.

2. The Union's Failure to Disclose its Evidence of an Alleged Restored Majority is Incompatible with the Act.

Next, the Union's gamesmanship in failing to disclose its alleged evidence of a restored majority prior to Leggett withdrawing recognition, despite its months of advanced notice regarding Leggett's plans is incompatible with the Act. Two fundamental tenants of the Act are that employees have the right to refrain from engaging in union activities, and that a primary goal of the Act is to promote stable labor relations. *See* 29 U.S.C. §§ 157, 159(b); *Colgate-Palmolive-Peet Co. v. NLRB*, 338 U.S. 355, 362 (1949) ("To achieve stability of labor relations was the primary objective of Congress in enacting the [NLRA]."). In this case, both tenants are undermined because Leggett relied in good faith on a disaffection petition signed by a majority of its employees to withdraw recognition. Leggett communicated to employees months before its formal withdrawal that it would only withdraw recognition if a majority of employees still supported the disaffection petition when the CBA expired. (Pet. Ex. H). Leggett communicated to the Union prior to withdrawal that it had not received any evidence that the Union had restored its majority. (Resp. Ex. 11, Ex. A). Finally, through counsel, Leggett verbally communicated to the Region that if there was evidence that a majority of employees no longer supported the disaffection petition, the Region should advise Leggett so that it could evaluate its legal options. Branch Manager Chuck Denisio declares that he would have sought an election before the Board had verified evidence been presented to Leggett that the employees' disaffection petition was no longer supported by a majority. (Resp. Ex. 11, at pp. 2-3). But neither the Region nor the Union disclosed the Union's petition to Leggett prior to March 1, or even definitively stated to Leggett that the Union had restored its majority. Instead, both the Union and the Region waited until Leggett acted on the only evidence before it and withdrew

recognition, and then filed and pursued unfair labor practice charges against Leggett based on the undisclosed pro-union petition.

In fact, in *HQM of Bayside, LLC*, 348 NLRB 758, 758-761 (2006), *Parkwood Development Center*, 347 NLRB 974, 974-975 (2006), and *Highlands Hospital Corporation*, 347 NLRB 1404, 1407 (2006), all of which Petitioner relies on here, the employer had actual notice, prior to withdrawing recognition, that the Union had reestablished majority status. Thus, in *HQM*, 348 NLRB at 758-761, the Board emphasized that the Union sent a letter to the employer before the withdrawal occurred stating that it had submitted to the Board a petition signed by a majority of bargaining unit employees stating they desired to keep union representation. In *Parkwood*, 347 NLRB at 974-975, the day before the withdrawal occurred, the Union sent evidence of its majority support to the employer, and the Board emphasized that the employer had conflicting evidence about whether a majority of its employees supported the union or not. Finally, in *Highlands Hospital*, 347 NLRB at 1407, the union only needed one employee to switch sides and that happened when she joined the union, requested the employer start deducting union dues from her paycheck, and the employer started doing so over a month before withdrawing recognition from the union. Here, however, no one provided Leggett with any evidence that the Union obtained a restored majority; rather, the only thing Leggett received was a letter from the Union stating that the Union "did not believe" that it had lost a majority. This is hardly evidence of the Union's majority, however.[13]

Further, the sort of gamesmanship engaged in by the Union here does not promote employee free choice or the stability of labor relations. Rather, it throws Leggett, the Union, the

[13] Petitioner also relies on *Vanguard Fire & Supply Co. v. NLRB*, 468 F.3d 952, 957-59 (6th Cir. 2006), but this case is factually distinguishable because it involved an issue of whether three employees should be included in a bargaining unit based on their job duties or not. If they were included, seven of 14 bargaining unit members would have supported withdrawal of recognition. Because the three employees were not properly in the unit, however, only four of 11 bargaining unit members supported withdrawal, and thus withdrawal was unlawful.

U.S. government and taxpayers into protracted and expensive litigation. This is also why two former Republican members of the Board have proposed that, in withdrawal of recognition situations like this one, unions should be required to present evidence of a reacquired majority status within a reasonable time prior to contract expiration. *See Scomas of Sausalito, LLC*, 362 NLRB No. 174, slip op. at 1, n.2 (Aug. 21, 2015) (Member Johnson stating that the imposition of such a requirement would be more consistent with the Act's fundamental policies of promoting stable labor relations and protecting employee free choice); *Parkwood Developmental Ctr.*, 347 NLRB at 975, n.8 (noting that Chairman Battista would require the Union to present evidence of restored majority within a reasonable time and that the Union had done so). Not only would the imposition of such a rule promote stable labor relations by allowing the parties to make decisions based on better knowledge, but also it would avoid the very quagmire that has been created in this case through no fault of Leggett.

Petitioner will respond that Member Johnson's and Chairman Battista's preferred rules are not extant law. That may be, but many of the cases he relies on here emphasized that the employer had actual evidence of the Union's restored majority before withdrawing recognition. Also, the composition of the NLRB will soon change,[14] and given the facts and circumstances of this case, Leggett will certainly be advocating that such a rule be imposed. If it is, Petitioner's likelihood of success on the merits of this case is reduced dramatically.

C. <u>Relief in this Case Would not be Just and Proper.</u>

As demonstrated above, Petitioner has failed to satisfy the reasonable cause prong of this Circuit's section 10(j) test. Even if the Court determines that this requirement has been met, however, an injunction still may not be granted unless the Court also decides that it would be just

[14] Bloomberg BNA, "Trump to Nominate Kaplan, Emanuel for Key Labor Board Spots," May 11, 2017, at https://www.bna.com/trump-nominate-kaplan-n73014450763/ (last accessed May 23, 2017).

and proper to do so as specified in the statute.[15] A section 10(j) injunction is to be reserved for extraordinary cases to "preserve the status quo, pending final Board adjudication [as] may be required to avoid frustration of the basic remedial purposes of the Act and possible harm to the public interest." *Nixon Detroit Diesel*, 859 F.2d at 28-29. Such relief should be granted only when reasonably necessary to preserve the ultimate remedial power of the Board and is not a substitute for the exercise of that power." *Voith*, 551 Fed. Appx. at 834. The "just and proper inquiry … turns primarily on whether a temporary injunction is necessary 'to protect the Board's remedial powers," *Jackson Hosp. Corp*., 351 F.3d at 239, and the "unusual likelihood of ultimate remedial failure by the NLRB." *Chester v. Grand Healthcare Co*., 666 F.3d 87, 98 (3rd Cir. 2011). Based on these standards, injunctive relief here does not meet the just and proper requirement.

1. Petitioner's Proffered Reasons for Injunctive Relief Lack Evidentiary Support and thus are not Sufficient to Establish a Need to Preserve the Board's Remedial Authority.

Petitioner has asserted two reasons why it believes injunctive relief is just and proper in this case. One is that an injunction is necessary because the withdrawal of recognition "threatens to irreparably undermine employee support necessary for collective bargaining and to negate the efficacy of the Board's final bargaining order." (Pet. Mem. at 11). Two, Petitioner asserts that, "[a]bsent interim recognition and bargaining, the unit employees will also be deprived of the benefits of union representation pending the Board's decision, a loss that a Board order in due course cannot remedy." (Pet. Mem. at 13). Neither of these proffered reasons is supported by evidence. Rather, both are based on argumentative and conclusory supposition.

[15] Section 10(j), in pertinent part, states that a district court upon the Board's issuance of complaint and filing of a petition "shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper." While framed as a grant of authority, the "just and proper" requirement is necessarily a limitation on the authority of the courts mandating that the Board's request for relief be measured by this standard.

With regard to the first reason, Petitioner has not cited any facts or evidence as to how and why, absent an injunction, employee support for collective bargaining would be irreparably harmed. The premise of this argument–that bargaining is the source of employee support for the union-is belied by the facts of this case. Despite a nearly 52-year bargaining relationship at the Winchester plant, a majority of employees have expressed the sentiment they no longer wait union representation. And these employees felt sufficiently strongly about the matter to sign a petition to that effect. Further, subsequent to the withdrawal of recognition, additional employees have stepped forward and have also signed petitions stating they do not want union representation. (Resp. Ex. 11, Ex. B).[16] Thus, the asserted basis for relief–that bargaining must be compelled until the Board acts to avoid undermining employee support for the Union, is not reasonably applicable here. Even where there was a bargaining relationship, employees' support for the Union had eroded, without interference from the Company.[17] An injunction in these circumstances, besides supporting the Union, is in effect a repudiation of the sentiment of employees who said they no longer wanted this Union to represent them.

To be sure, Petitioner has cited numerous cases that reach the conclusion that an interim bargaining order is necessary to protect against undermining of the Union. Notably, unlike in this case, each of the cases cited by Petitioner involves a situation where there was actually an underlying administrative record and evidence that demonstrated the undermining of employee support for the union.[18] The other cases cited by Petitioner are distinguishable on their facts

[16] Of the 32 signatures on Resp. Ex. 11, Ex. B, 18 of them are new and were provided to Leggett prior to the issuance of the original complaint.

[17] This is not a case where the Union was newly certified or where employer unfair labor practices caused the withdrawal of recognition.

[18] *See Harrell v. America Red Cross*, 714 F.3d 553 (7th Cir. 2013); *Frankl v. HTH Corp*, 650 F.3d 1334 (9th Cir. 2011); *Small v. Avanti Health Systems,* 661 F.3d 1180 (9th Cir. 2011); *Bloedorn v. Francisco Foods, Inc.,* 276 F.3d 270 (7th Cir. 2001); *NLRB v. Electro-Voice, Inc.,* 83 F.3d 1559 (7th Cir. 1996); *Kobell v. United Paperworkers International Union*, 965 F.2d 1401 (6th Cir. 1992); *Gottfried v. Frankel*, 818 F.2d 485 (6th Cir, 1987); *Asseo v.*

because they did not involve an untainted withdrawal of recognition following a fifty-plus-year bargaining history.[19] In contrast, instead of evidence in this case, there is merely Petitioner's naked assertions and say so. This is tantamount to attempting to meet the just and proper standard based on the bare allegations of the petition and arguments made in the brief. This cannot be sufficient as a warrant for the court to exercise its extraordinary powers to grant the requested relief.

Petitioner's other proffered reason, namely, that Unit employees will be deprived of the benefits of Union representation pending the Board decision is likewise deficient. Petitioner makes speculative, naked assertions without any factual support. Petitioner does not point to any evidence warranting such a conclusion. The benefits that might be lost without Union representation are not identified, and no evidence has been offered on how, absent an injunction, employees would lose out concerning their terms and conditions of employment. Further, as addressed more completely in the next argument, Petitioner's assertion that a Board order could not remedy a loss of benefits disregards the well-established authority the Board possesses to

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Pan American Grain Co, Inc., 805 F.2d 23 (1st Cir. 1986); *Sheeran v. Am. Commercial Lines*, 683 F.2d 970, 979 (6th Cir. 1982); *Electrical Workers v. NLRB (Tiidee Products*), 426 F.2d 1243 (D.C. Cir. 1970); *Muffley v. APL Logistics,* 185 LRRM 2415, 2008 WL 4561573 (W.D.Ky. 2008) (unpublished); *Calatrello v. Carriage Inn of Cadiz*, 2006 WL 3230778 (S.D. Ohio 2006); *Glasser v. Heartland Health Care Center,* 333 F.Supp.2d 607 (E.D. Mich. 2003); *Duncan v. Horizon House Development Services*, 155 F.Supp.2d 390 (E.D. Pa. 2001); *Overstreet v. Thomas Davis Medical Centers, PC*, 9 F.Supp.2d 1162 (D.Ariz. 1997); *Gottfried v. Mayco Plastics, Inc*., 472 F.Supp. 1161 (E.D. Mich. 1979); *Levine v. C & W Mining Co.*, 465 F.Supp. 690 (N.D. Ohio 1979).

[19] For example, one of the cases Petitioner cites did not even involve a petition for injunctive relief. *Electrical Workers v. NLRB (Tiidee Products*), 426 F.2d 1243 (D.C. Cir. 1970). Many of the cases cited arise in the context of union organizing campaigns leading up to or including a union election, in which the unions alleged that majority support was lost because of the employers' misconduct and sought a bargaining order. *Scott v. Stephen Dunn & Associates*, 241 F.3d 652 (9th Cir. 2001); *NLRB v. Electro-Voice, Inc.,* 83 F.3d 1559 (7th Cir. 1996); *Asseo v. Pan American Grain Co, Inc.,* 805 F.2d 23 (1st Cir. 1986); *Gottfried v. Mayco Plastics, Inc*., 472 F.Supp. 1161 (E.D. Mich. 1979); *Levine v. C & W Mining Co.,* 465 F.Supp. 690 (N.D. Ohio 1979). Two involved successor employers. *Small v. Avanti Health Systems*, 661 F.3d 1180 (9th Cir. 2011); *Bloedorn v. Francisco Foods, Inc.,* 276 F.3d 270 (7th Cir. 2001). Others still involve different, non-analogous facts, including hiring hall-related charges (*Sheeran v. Am. Commercial Lines*, 683 F.2d 970, 979 (6th Cir. 1982), allegations of employer misconduct to undermine union support—in which the parties specifically stipulated that it was **not** a "failure to bargain" case (*Gottfried v. Frankel*, 818 F.2d 485 (6th Cir, 1987), and the alleged failure of a union to bargain (*Kobell v. United Paperworkers International Union*, 965 F.2d 1401 (6th Cir. 1992); *Electrical Workers v. NLRB (Tiidee Products),* 426 F.2d 1243 (D.C. Cir. 1970)).

deal with precisely this type of situation. *See, e.g., Fibreboard Paper Prods. Co. v. NLRB*, 379 U.S. 203, 216 (1964) ("The Board's power is a broad discretionary one" and can require restoration of the status quo); *Vanguard Fire & Supply Co.,* 468 F.3d at 952 (upheld a finding of unlawful withdrawal of recognition, bargaining order, rescission of unilateral change and make whole order concerning certain economic benefits); *DuPont Dow Elastomers, LLC v. NLRB*, 296 F.3d 495, 500, 517 (6th Cir. 2002)(upheld NLRB order to rescind unilateral changes and restore medical insurance benefits); *Loral Defense Systems-Akron v. NLRB*, 200 F.3d 431, 448, 453 (6th Cir. 1994)(Board order requiring restoration of benefits and rescission of changes on union demand upheld). An injunction to guard against employee loss of benefits cannot be said to be just and proper where there has been no evidence presented of the deprivation of benefits employees might face, and no basis provided to indicate Board remedies would not be effectual.

2. An Injunction is Unnecessary to Protect the Board's Remedial Powers.

Further, existing Board remedies are adequate to address Petitioner's argument in support of 10(j) relief—the alleged improper withdrawal of recognition. The Board has broad remedial authority that includes the authority to order bargaining whether in the initial election context, the successor context, or after there has been a unilateral withdrawal of recognition such as in this case. All of these situations have in common a failure or alleged refusal by an employer to engage in collective bargaining, and in each instance the Board has the authority under the Act to order bargaining. *See*, *e.g.*, *HQM of Bayside,* 348 NLRB at 758-61 (withdrawal of recognition found unlawful, dueling petitions, ordering bargaining); *Highlands Hospital Corporation*, 347 NLRB at 1407 (decertification petition and withdrawal of recognition in Spring 2001, Board approved bargaining order in 2006); *Penn Tank Lines*, 336 NLRB at 1068-69 (1997 withdrawal of recognition found unlawful, bargaining order approved in 2001). Thus, there cannot be a failure of Board remedies. Viewed from the perspective of the Board's remedies, this case is not

extraordinary or unusual "when compared to every other case before the Board," as exemplified by in the cited cases above, and a "final order by the Board is likely to be as effective as an interlocutory order by this Court." *Calatrello v. American Church, Inc.,* Case No. 1:05-CV-797, 2005 U.S. Dist. LEXIS 46294, at *10 (N.D. Ohio June 9, 2005). Accordingly, the entry of an injunction is not appropriate.

Further, the cases are legion concerning the Board's remedial authority to address changes made to employee's terms and conditions of employment during the period when bargaining has not taken place. *See, e.g.*, II JOHN E. HIGGINS, JR., THE DEVELOPING LABOR LAW 2948 (6th ed., 2012). The Petitioner's contention that a Board "order in due course" cannot remedy the deprivation of the benefits of collective bargaining is stunning, and taken literally would mean that every case where there is a delay in bargaining would require the intervention of the courts to order bargaining. The Board has authority, again which it regularly exercises, where there has been a failure to bargain to order an employer upon request of the union to rescind any unilateral changes, *i.e.*, changes in terms and conditions of employment without bargaining. *See, e.g. id.; Bryan Memorial Hospital*, 282 NLRB 235, 235 (1986) (granting union's motion for summary judgment and ordering rescission of unilateral changes after employer had violated previous Board order mandating rescission of other unilateral changes). In practice, this typically means that any improvements the employer has made are retained, and any negative items are rescinded. *See, e.g., M&M Automotive Group, Inc.*, 342 NLRB 1244, 1249-50 (2004) (ordering that the employer rescind any unilateral changes implemented upon request by the union, but stating that "nothing in this Order…shall be construed to require the Respondent to withdraw any benefit previously granted unless requested by the Union"). The consequence is that there is a complete restoration of all terms and conditions of employment,

and in some cases improved terms and conditions. This is not remedial failure warranting the grant of an injunction, instead it is remedial success indicating that an injunction is unnecessary.

As courts have said, if a final order by the Board is likely to be as effective as a Court's interlocutory order, the entry of injunction is not appropriate. *See Calatrello*, 2005 U.S. Dist. LEXIS 46294, at *10 (citing *Gottfried v. Frankel*, 818 Fd.2d 485, 495 (6th Cir. 1987)). No evidence has been provided indicating that interim injunctive relief is necessary to preserve the Board's remedial powers, and nothing extraordinary has been pointed to about the circumstances of this case that would distinguish it from others where the Board has issued orders to bargain or to rescind unilateral changes. This is thus not a case where an injunction is just and proper in order to protect the Board's remedial powers.

3. The Petitioner's Request is not Just and Proper Because it Seeks an Injunction as a Substitute for Board Action

Petitioner is attempting to use the power of this Court to secure interim relief based on a new legal theory that has not been adopted by the Board. Under this new legal theory, an election would be the only way recognition can be withdrawn from an incumbent union. As such, Petitioner is seeking to have this Court disregard the guidelines in *Jackson Hospital* to "be mindful that 'the relief to be granted is only that reasonably necessary to preserve the ultimate remedial power of the Board and is not to be a substitute for the exercise of that power.'" 351 F.3d at 239. Despite this clear admonition, Petitioner, by predicating its request for 10(j) relief on a petition alleging this new theory, is asking this Court to provide a substitute for Board remedies and actions.

Under current law, as summarized in *Scomas of Sausalito, Inc. v.* NLRB, 849 F.3d 1147, 1151-1152 (D.C. Cir. 2017), pursuant to the NLRB's decision in *Levitz Furniture Co.*, 333 NLRB 717 (2001), employees have two ways of severing union representation. "First, if 30% of

the unit employees agree, they can obtain an election by filing a decertification petition with the Board, which decides the majority status based on the election." *See* 29 U.S.C. § 159(c)(1)(A)(ii); NLRB Case Handling Manual Part Two, Representation Proceedings § 11023.1 (Jan. 2017). Second, the employees can go directly to the employer and present it with a petition or other evidence that the union has lost majority support. *See, e.g., Pack Coast Supply, LLC* v. NLRB, 801 F.3d 321, 324, 326 (D.C. Cir. 2015); *Vincent Indus. Plastics, Inv. v. NLRB*, 209 F.3d 727, 730 (D.C. Cir. 2000); *accord Scomas*, 849 F.3d at 1151-1152. And, when presented with evidence that the union no has majority backing, the employer has three options, also summarized in *Scomas*: one, request a formal Board-supervised election; two, withdraw recognition from the union and refuse to bargain, which was the case here; or three, conduct an internal poll of employee support for the union. *See Scomas*, 849 F.3d at 1152.

As noted above, a new element has been added to this process as reflected in the instant petition. The NLRB's General Counsel has taken the position and has advised all regional offices that from now on, rather than permitting employers to withdraw recognition, the Regions should issue complaints alleging that the only way in which representation can be severed is through employees' filing of a decertification petition or the employer's filing of an RM petition requesting an election.[20] Attached as Respondent's Exhibit 12 is the General Counsel's memorandum to all the regional offices where, in pertinent part, he states "that in order to best effectuate . . . the policies of the Act, regions should request that the Board adopt a rule that absent an agreement between the parties, an employer may lawfully withdraw recognition from a Section 9 representative based only on the result of an RM or RD election." The General

[20] NLRB General Counsel Memorandum 16-03 (May 9, 2016) (Resp. Ex. 12) (hereinafter the "GC memo").

Counsel is thus seeking to create a new unfair labor practice and thereby change the law on withdrawal of recognition established by *Levitz Furniture,* 333 NLRB 717 (2001).

In this case, Petitioner seeks interim relief pending this change in the law. Indeed, Petitioner's petition before this Court, alleges in ¶12(b) that "about March 1, 2017, Respondent withdrew its recognition of the union as the exclusive collective bargaining representative of the unit in the absence of the results of a Board election." The Petition further alleges that the foregoing conduct, *i.e*, the withdrawal absent the results of a Board election, constituted a failure to bargain in good faith with the exclusive collective bargaining representative of employees in violation of §§ 8(a)(1) and (5) of the Act. Petitioner's allegations in ¶12(b), as made clear in the General Counsel memo, is the called-for change in the law that has not yet been accepted by the Board. It could hardly be said that an injunction is just and proper where the legal predicate for the relief being sought has not yet been accepted by the NLRB itself.

4. The Requested Relief is not Just and Proper Because of the "Hide the Ball" Approach.

As detailed above, the Union (and the Region) withheld information from Leggett about the Union's alleged restored majority status, which, if the Union's petition is to be believed, was achieved on January 18. As the D.C. Circuit held in *Scomas*, 849 F.3d at 1156, an affirmative bargaining order is an "extreme remedy" that prevents employees from exercising their right to dislodge the union regardless of their sentiments. (internal citations and quotation marks omitted). Indeed, in *Scomas*, the D.C. Circuit stated that a bargaining order is not "a snake-oil cure for whatever ails the workplace." *Id.* (quoting *Avecor, Inc. v. NLRB*, 931 F.2d 924, 938-39 (D.C. Cir. 1991)).

Notably, in *Scomas*, while the D.C. Circuit found a violation of the Act had occurred, it denied the Board's requested remedy. In doing so, it expressed concern both about the same kind

of withholding of information about the restored majority status of the union as seemingly occurred here, and also, the Board's apparent disregard of employee sentiment. And rather than remand the case back to the Board, the Court "decline[ed] to merely order a remand that would permit the Board to reimpose a bargaining order." 849 F.3d at 1156.

Here, just like in *Scomas*, Leggett acted in good faith in withdrawing recognition from the Union on March 1 based on the only information it had—the disaffection petition signed by a majority of bargaining unit employees. There is no allegation that the disaffection petition was tainted by unfair labor practices. Leggett verified the employees' signatures on the disaffection petition and provided documents from the signers' personnel files to allow Region 9 to verify them as well. Moreover, the Union clearly knew about its alleged pro-union petition (or at least its plan to fabricate such a petition) based on the signatures it obtained on January 18—six weeks before Leggett formally withdrew recognition. But the Union said nothing beyond its statement that it "did not believe" Leggett's claim. In short, it was not Leggett's conduct that caused 180 of its employees to sign a petition seeking to dislodge the Union, and the Board does not allege to the contrary. *See Scomas*, 849 F.3d at 1157. Thus, just as in *Scomas*, this is not a case where Leggett is going to somehow benefit by its own wrong—because it has committed no wrong other than being victimized by Union gamesmanship; it has simply relied on the only evidence known to it in withdrawing recognition from a Union that a majority of its bargaining unit employees no longer support. Accordingly, just as the court in *Scomas* denied the Board's request for a bargaining order in the withdrawal of recognition setting, so too should this Court deny the requested 10(j) relief, as to do so would be just and proper.

5. The Requested Injunctive Relief Goes Beyond Seeking to Preserve the Status Quo and Therefore is not Just and Proper

Under this Circuit's law, the "goal of a 10(j) injunction is to preserve the status quo pending completion of the Board's unfair labor practices proceedings." *Schaub v. West Michigan Plumbing & Heating, Inc.*, 250 F3d 962, 970 (6th Cir. 2001) (citing *Nixon Detroit Diesel*, 859 F.2d at 30). Stated differently, the court in applying the "just and proper" standard must consider whether it is necessary to return the parties to the status quo. *See Gottfried*, 818 F2d at 495. The "status quo is the state of affairs in place before the alleged unfair labor practice occurred." *Muffley v. Jewish Hospital & St. Mary's Healthcare, Inc.*, Case No. 3:12-MC-00006-R, 2012 WL 1576143, at *6 (W.D. Ky. 2012) (citing *Calatrello v. Automatic Sprinkler Corp. of Am.*, 55 F.3d 208, 214 (6th Cir. 1995)). It therefore follows that the "just and proper" standard is not met where the relief sought, as here, goes beyond restoring and preserving the status quo, but instead seeks to impose new obligations on a respondent.

Petitioner's requested relief does not attempt to merely restore the status quo prior to Leggett's withdrawal. Rather, Petitioner would have this Court go beyond the status quo and require that Leggett (a) bargain with the Union for a minimum of 15 hours per week, which is not legally required by the Act; (b) post copies of the Court's order, which is not legally required by the Act and is really an effort to impose unfair labor practice remedies in the context of a 10(j) proceeding; and (c) hold mandatory employee meetings at which a Company official reads the Court's order, which is also tantamount to an unfair labor practice remedy and an extraordinary one at that to be used only in the rarest of circumstances. *See, e.g.*, II HIGGINS, THE DEVELOPING LABOR LAW, 2963-64 (identifying the remedy of having a top official remedial notice as an extraordinary remedy for the most flagrant of violations).

a. The Reading Remedy is not Just and Proper

Section 10(c) of the Act empowers the Board to issue cease and desist orders and impose affirmative remedies if it finds violations of the Act. 29 U.S.C. § 160(c); *see Fibreboard Paper Productions Corp. v. NLRB*, 379 U.S. 203 (1964). Such remedies "must be tailored to fit the nature and extent of the violations found and [the Act] does not confer upon the Board 'a punitive jurisdiction enabling the Board to inflict…any penalty it may choose because [a respondent] is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 235-236 (1938). The Supreme Court has gone further, however, and found that the NLRB may not impose punitive remedies of any kind, and that it is instead limited to restoring the status quo pre-violation. *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 10, 12-13 (1940); *NLRB v. J.H. Rutter-Rex Mfg. Co.,* 396 U.S. 258, 265 (1969); *see also New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1470 (9th Cir. 1997) (Board may impose remedy to restore situation to what it would have been pre-violation, it may not impose a punitive remedy).

The Board is seeking in this case to have a management representative from Respondent read an order from this Court, which is punitive. In *NLRB v. Laney & Duke Storage Warehouse Co., Inc.*, the court reviewed whether a requirement that the Board's Recommended Order and Notice be read by management to each employee, singly or collectively, was punitive in nature. 369 F.2d 859, 869 (5th Cir. 1966). The court in that case found that the requirement was punitive and was "unnecessarily embarrassing and humiliating to management rather than effectuating the policies of the Act." *Id.*

In *International Union of Electrical, Radio, and Machine Workers v. NLRB*, 383 F.2d 230, 232-33 (D.C. Cir. 1967), the court also found that the reading requirement was punitive and onerous. In that case, the Board wanted the employer to read its order to groups of employees

during work hours in addition to posting the notice and mailing a copy to employees. While the court acknowledged that the Board has broad discretion in fashioning its remedies, it found that such discretion was not unlimited. It found that the employer's reading of the order to employees would be humiliating and degrading and "undoubtedly have a lingering effect on future relations between the company and the Union." *Id.* at 233.

Even the Board recognizes that an "extraordinary" or "special remedy can only be imposed where required by the particular circumstances of a case. *Ishikawa Gasket Am.*, 337 NLRB 175, 176 (2001). The D.C. Circuit requires that there be a substantial link between the public reading and the unfair labor practices that must be shown by the Board. *United Food and Comm. Workers Int'l v. NLRB*, 852 F.2d 1344 (D.C. Cir. 1988). In another case, it indicated that it will not enforce such orders when the record fails to indicate "particularized need" for the order. *Teamsters Local 115 v. NLRB*, 640 F.2d 392, 403 (D.C. Cir. 1981).

Here, the Board's request that an order be read in front of employees by one of Leggett's management officials is one that is facially punitive. Furthermore, the Board has not established that the facts of the case license it to request such an extraordinary remedy. In the absence of such evidence, and because the request is in contravention of the limitations on the Board to only issue remedial measures, Respondent respectfully acts that this inappropriate request should be denied.

b. The Requested Bargaining Order is not Just and Proper

This is not a case in which, absent a bargaining order, Respondent would "benefit by [its] own wrongs." *Daisy's Originals v. NLRB*, 468 F.2d 493, 502 (5th Cir. 1972). Here, Respondent had a good faith belief that the Union had lost majority support, based on a petition signed by a majority of employees, when it withdrew recognition of the Union. Like in the recent *Scomas* Case, Leggett has engaged in no "gamesmanship," and there is no evidence, that absent an

interim bargaining order, that it will recidivate. *Scomas,* 849 F.3d at 1157. Therefore, here, as the D.C. Circuit found in *Scomas*, the only conceivable function of an interim bargaining order would be to punish Leggett, which, as a punitive remedy, is outside the scope of the Board's authority to seek. *See, e.g.*, *New Breed Leasing,* 111 F.3d at 1470. Additionally, in the absence of any evidence of possible recidivism here, the Court, like the D.C. Circuit in *Scomas*, should reject the Board's request for an interim bargaining order.

c. Even if the Court Finds a Bargaining Order is Warranted, the Board's Request that the Parties be Ordered to Bargain for 15 Hours a Week is not Just and Proper

In ordering an employer to negotiate with a union, the Board has traditionally been reluctant to impose any specific obligations regarding the frequency or duration of bargaining sessions. In *Professional Eye Care*, 289 NLRB 1376, 1378 n. 3 (1988), the Board declined to adopt the judge's recommendation that the respondent be ordered to bargain a minimum of 15 hours per week and to send bargaining reports to the Region every 15 days, stating that it would not impose standards for the respondent's compliance with its bargaining order. *See also Eastern Maine Medical Center*, 253 NLRB 224, 228 (1980), *enf'd.* 658 F.2d 1 (1st Cir. 1981) (the Board did not adopt the judge's recommended order that respondent bargain 15 hours per week); *The Leavenworth Times*, 234 NLRB 649, 649 (1978) (Board found no merit in GC's exceptions to the failure of the ALJ to order a specific bargaining schedule of 15 hours per week).

The Board specifically addressed the imposition of such special remedies in *Monmouth Care Center*, wherein the Board deleted that portion of the judge's recommended order that required two respondents to bargain jointly with the union at least once a week. 354 NLRB 1, 1 n. 3 (2009). In *Myers Investigative & Security Services,* 354 NLRB No. 51, n. 2 (2009), the Board denied the General Counsel's exception to the judge's failure to include as a remedy that respondent meet with the union not less than 6 hours per session or any other mutually agreed-

upon schedule until a collective-bargaining agreement or good-faith impasse was reached. The Board stated that there was a lack of support for such a remedy in current law.

Most recently, the Board declined to order that the parties bargain for a minimum of 4 hours per week and instead issued a standard bargaining order (without a specific schedule), affirming the ALJ's finding that there was no support for extraordinary remedies in that case. *Columbia Coll. Chicago,* 363 NLRB No. 154 (2016). Here, as in *Columbia College*, there is no basis in the record for the extraordinary remedy of requiring a certain amount of bargaining per week. Leggett is not a recidivist, and it had a good faith basis for its conclusion that the Union had lost majority support, which led it to withdraw recognition of the Union. Therefore, even if the Court decides a bargaining order is appropriate, it should issue only a standard bargaining order, rather than ordering the onerous and inappropriate bargaining schedule requested by the Board.

IV.
CONCLUSION

For all of the foregoing reasons, Leggett respectfully requests that Petitioner's request for relief under section 10(j) of the Act be denied, that Leggett be awarded its costs in connection with this proceeding, and that it be awarded any other relief, legal or equitable, to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent Leggett & Platt's Memorandum of Points and Authorities in Opposition to Petitioner's Request for An Injunction Under Section 10(j) of the National Labor Relations Act, as Amended was filed and served via the CM/ECF system this 23th day of May, 2017:

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